

1 Q So you don't know whether it was the
2 front of it or the passenger side or what?

3 A No, sir, I do not.

4 Q And just so I understand it because of --
5 let's see if I can get -- make sure --

6 A Am I allowed to look at these pictures --

7 Q Certainly.

8 A -- while you're talking?

9 Q What are you looking for?

10 A Just possible damage to the pickup truck
11 in the front of it, but it rolled over and it had so much
12 damage I'm not sure if I could tell.

13 Q Okay.

14 A I'm still listening.

15 Q It was Karen Bingaman who indicated that
16 she was deciding whether or not to pull into the rest
17 area, and that's when the box truck changed lanes to the
18 left-hand lane to go around her?

19 A Yes, sir.

20 Q And she said it was traveling between 60
21 and 65 miles an hour?

22 A Yes, sir.

23 Q Okay. And at that point in time as far
24 as Ms. Bingaman was concerned, the first accident between

1 Lester and SMC had already taken place?

2 A Yes, sir.

3 Q Okay. And then you had the
4 mother/daughter which is Christine Zampini and her mother,
5 which I believe is Brown, Debara Brown. They were riding
6 together in the white car and they too arrived on scene
7 after the first collision but before the second?

8 A I believe so. They had pulled into the
9 left side of the rest area.

10 Q Okay.

11 A They couldn't get in.

12 Q And Ms. Mortensen would have been the
13 only potential witness to having heard -- strike that.

14 As far as you're aware, Ms. Mortensen was
15 at the rest area for both collisions?

16 A Ms. Mortensen?

17 Q She's the one who pulled in and then went
18 through the truck area and turned around?

19 A The woman out of California?

20 Q Yes. I call her the broken leg lady, the
21 one that had an injury to one of her legs.

22 A Okay. Now, can you repeat your question?

23 Q Of the four women, the only one that
24 might have been there for both the original collision

1 between Lester and SMC and the collision between Lester
2 and a box truck being driven by Mr. Shifflett may have
3 been Ms. Mortensen?

4 A Yes, sir.

5 Q But you don't even know that?

6 A I do not.

7 Q Once you get to the top of the grade that
8 you indicated was a few tenths of a mile up the road, is
9 there any obstruction in the vision of a driver heading
10 south?

11 A Once you get to the top?

12 Q Once you get to the top.

13 A No, sir.

14 Q Okay. And it's a slight downhill grade?

15 A Yes, sir.

16 Q And maybe a slight turn to the left?

17 A Yes, sir.

18 Q And did you measure the width of the
19 roadway, Interstate 81?

20 A No, sir.

21 Q Do you know what the standard width is
22 for a lane on 81?

23 A No, sir, can't say off the top of my
24 head.

1 Q Along the left side of that section of
2 Interstate 81, is there a shoulder on the left-hand side
3 of the road?

4 A A small shoulder, yes, sir.

5 Q Well, okay. There might be a foot or two
6 before a guardrail?

7 A Yes, sir.

8 Q But there's not enough to put a car onto
9 the shoulder?

10 A No, sir. No, sir.

11 Q All right. Are you aware of whether or
12 not any vehicles passed the scene of the accident between
13 the first collision and the second collision?

14 A I'm not aware of any.

15 Q When you spoke to Mr. Martinez after the
16 accident, where was his vehicle parked at that point in
17 time?

18 A After the accident? He's parked right
19 here.

20 Q Go ahead and put the box around where his
21 vehicle would have been.

22 A (Witness complies.)

23 Q And then move a line up to here which
24 would be G.

1 A (Witness complies.)

2 Q All right. Well, actually, facing both
3 ways. The towing vehicle --

4 A Martinez's truck was facing this way. I
5 believe Salinas's was facing this way.

6 Q Okay, I gotcha.

7 To your knowledge, when you pulled up,
8 were there any tractor-trailers on the shoulder of the
9 exit -- entrance ramp into the rest area?

10 A I do not recall.

11 Q Based upon your experience, does that
12 shoulder, even though there are no parking signs all along
13 that shoulder, fill up with tractor-trailers?

14 A Yes, sir.

15 Q But as far as your recollection that
16 morning you don't remember if there were any there or not?

17 A I do not.

18 Q And just so I'm clear you remember there
19 was some debris north of what's been the point of
20 collision, second collision point that's been marked as E,
21 but you don't remember where it was. Some debris from the
22 first collision?

23 A Yes, sir, that's where the first
24 collision.

1 MR. FRANKL: Answer any questions my
2 other counsel may have.

3 MR. HEARN: Do you want to go ahead?

4 MS. WHITE: Sure. Trooper -- what
5 exhibit are we on?

6 THE REPORTER: Number 4.

7 (Deposition Exhibit No. 4 was marked for
8 identification.)

9 EXAMINATION

10 BY MS. WHITE:

11 Q Is this a picture of the sign that
12 Mr. Martinez was charged with failure to obey?

13 A Yes, ma'am.

14 Q Is that a picture of a traffic sign?

15 A Yes, sir.

16 Q Is that the traffic sign that's at the
17 rest area?

18 A I believe it is the traffic sign at the
19 rest area.

20 Q And is that the traffic sign that
21 indicates not to exit the entrance of the rest area?

22 A Yes, ma'am.

23 Q And is that sign the reason that you
24 charged Mr. Martinez with failure to obey a traffic sign?

1 A Yes, ma'am.

2 Q Did Mr. Martinez indicate which lane --
3 did he indicate that he saw Mr. Lester's vehicle before
4 the impact?

5 A I believe he did.

6 Q Did he indicate which lane Mr. Lester's
7 vehicle was in before the impact?

8 A I -- I can't recall.

9 Q Did he make a statement that he had
10 messed up?

11 A Yes, ma'am.

12 Q Meaning Mr. Martinez?

13 A Yes, ma'am.

14 Q And did he admit that he was blocking at
15 least the right lane of the interstate?

16 A Yes, ma'am.

17 Q Is it your understanding that he was
18 trying to reverse out of the interstate at the time of the
19 impact?

20 MR. HEARN: Object to the form.

21 THE WITNESS: Is it my understanding that
22 he was trying to reverse?

23 BY MS. WHITE:

24 Q Yeah. Do you know was he -- at the time

1 of impact, was he in drive or reverse?

2 A I don't know.

3 Q Okay. And he indicated that it was about
4 30 seconds between the two impacts?

5 A I do not recall.

6 Q The book that he handed you, you
7 described a notebook that he gave to you that you set up
8 on your dash?

9 A I believe it was a black three-ring
10 binder.

11 Q Sort of like --

12 A Exactly like that one, I believe.

13 Q For the record, standard three-ring
14 binder. Did it have a cover that you noticed?

15 A Not that I recall.

16 Q Do you remember any identifying
17 information about it?

18 A No, ma'am.

19 Q Do you know where he got it?

20 A Out of his truck.

21 Q The SMC truck?

22 A I believe so.

23 Q And was that in response -- do you know
24 why he went to go get it?

1 A I told him I needed his driver's license,
2 vehicle registration, and proof of insurance.

3 Q And did he indicate to you who owned the
4 vehicle he was driving?

5 A Not that I recall.

6 Q Did you have any conversations with him
7 that weren't recorded on your recording device?

8 A No, ma'am.

9 Q How does that thing work?

10 A Activates when I hit my lights, unless I
11 turn it on. And it turns off when I hit the stop button.
12 But it's -- it's a piece of equipment that breaks all the
13 time. I've had it replaced twice now.

14 Q And it records from some sort of --

15 A I've a mic, a microphone, it's a piece
16 about this big, and I keep it on my shoulder.

17 Q Did you -- you don't recall any other --
18 you looked at the photographs of the SMC vehicle that had
19 the damage on the -- on the front on the right and left.
20 But you don't recall any to the Salinas vehicle?

21 A No, ma'am.

22 Q Do you recall any other trooper pointing
23 out any possible damage on the Salinas vehicle?

24 A I do believe a trooper pointed out a

1 scuff mark, but we couldn't determine if it was before or
2 after.

3 Q And did you ask Mr. Martinez about it?

4 A I do not recall.

5 (Deposition Exhibit 5 was marked for
6 identification.)

7 BY MS. WHITE:

8 Q Exhibit 5, is that a photograph of
9 Mr. Lester's vehicle when you -- does it look like what it
10 did when you arrived?

11 A Yes, ma'am.

12 Q And so did it have any glass in the
13 driver's side window?

14 A Did it have any what now?

15 Q Glass in the driver's side window?

16 A I'm not sure.

17 Q Does it have it in the photograph?

18 A No.

19 Q So no one had moved or touched it at that
20 point?

21 A No, ma'am.

22 Q All the witnesses who made written
23 statements, did they all do that -- those inside your --
24 your vehicle?

1 A I do not recall. I know -- I believe,
2 based on what I've heard today -- I don't recall -- that
3 one witness made a statement with another trooper and
4 handed it to me.

5 Q And you don't recall which one that was?

6 A No, ma'am.

7 Q Do you know where the lady with the
8 broken leg was when she made her written statement?

9 A No, ma'am.

10 MR. FRANKL: Just for the record, she may
11 not have actually had a broken leg. It might
12 have been surgery or something.

13 MS. JOHNSON: May have been surgery.

14 MR. FRANKL: She had a cast on her leg.

15 BY MS. WHITE:

16 Q The lady from California?

17 A Correct. I think she was on crutches.

18 Q She was on crutches at the time?

19 A I believe so.

20 Q And do you know where she was when you
21 spoke to her?

22 A Which time?

23 Q Oh, did you speak to her more than once?

24 A I believe so. I'm not sure. I didn't

1 know if there was a specific time when you are referring
2 to. I really don't even know where I spoke to her at,
3 so...

4 Q Okay, fair enough.

5 Were there any -- so when you arrived,
6 the SMC vehicle, was it parked?

7 A When I arrived, I do not know.

8 Q Okay. When you inspected it, it was
9 parked?

10 A Yes, ma'am.

11 Q And how long after you arrived did you
12 look at it?

13 A I'm not sure.

14 Q Do you remember what fire department
15 came?

16 A I do not.

17 Q And how -- did you personally download
18 the data from your recording device?

19 A No.

20 Q How does that work?

21 A It automatically records to a disk. And
22 then once it's full I just eject it. And I personally
23 made a copy on my computer, though.

24 Q Okay. Were you the last one to leave the

1 scene?

2 A I believe so.

3 Q And did you witness Mr. Martinez
4 attempting to leave the scene when you were leaving?

5 A He asked for my help turning his truck
6 around. And I told him that he needed to call a tow truck
7 as he should have done in the beginning. And he said
8 okay. And I went to the bathroom in the rest area. And
9 then when I came out, he was trying to make a U turn again
10 in the rest area.

11 Q And do you know how eventually they left
12 the scene?

13 A I do not. I went up to him to write him
14 another ticket, but I needed to get to the hospital. So I
15 gave him a break.

16 MS. WHITE: That's all I have.

17 EXAMINATION

18 BY MR. HEARN:

19 Q Hi, Officer -- Trooper, excuse me.

20 A That's fine.

21 Q I have got a few questions for you. I am
22 David Hearn. We met earlier. I represent Mr. Martinez.
23 I'm going to jump around a little bit so I don't repeat a
24 lot of what's been asked already.

1 A Yes, sir.

2 Q So there may be long, dramatic-type
3 pauses in my questions.

4 A That's fine.

5 MR. DUNN: I object.

6 MS. JOHNSON: To the long?

7 MR. FRANKL: Not dramatic.

8 MR. HEARN: I'll try my best.

9 BY MR. HEARN:

10 Q I think I heard you say in response to
11 somebody's question that for the video you do have the
12 ability to stop it. You can hit a button and it stops the
13 video --

14 A In my car?

15 Q Yes.

16 A Yes.

17 Q Is it your -- in terms of when you're
18 investigating a motor vehicle accident, is it your
19 personal practice to stop the video/audio recording when
20 your investigation is complete?

21 A No.

22 Q Okay. In this case -- you remember
23 looking at the video?

24 A Briefly. It was, like I said, a week

1 after the accident. But since then I have not.

2 Q I'll represent to you -- I looked at it.
3 I will represent to you it appears that the last thing
4 that's recorded is Mr. Martinez is in your car with you.

5 A Okay.

6 Q And you're asking him some questions and
7 then the video stops.

8 A Okay.

9 Q All right. There is -- I will also
10 represent to you there is no recording of you giving him
11 the ticket.

12 A Okay.

13 Q Do you recall giving him the ticket?

14 A Yes, sir.

15 Q Do you recall discussing that with him?

16 A Discussing what the ticket was, he had to
17 appear at court, yes.

18 Q Right. So there were some communications
19 between you and Mr. Martinez that are not captured on the
20 video or audio?

21 A I guess so.

22 Q Do you remember anything about those
23 discussions?

24 A Other than he's lucky he didn't kill

1 anybody, I remember saying that. He started to almost
2 break down and cry. And that was it.

3 Q Do you remember any statements he said to
4 you that were not on the video?

5 A No.

6 Q Do you remember how long that discussion
7 lasted, the part that wasn't videotaped or audio taped?

8 A A minute, maybe two.

9 Q And you don't know why that wasn't
10 recorded?

11 A No, sir.

12 Q Why did you not have Mr. Martinez prepare
13 a written statement?

14 A I believe, from what he told me, I had it
15 all on video, that I didn't need a written statement from
16 him.

17 Q Okay. When he showed you on the roadway
18 where he was, he took you out there and physically
19 demonstrated that?

20 A Yes, sir.

21 Q That's not documented on the video,
22 correct?

23 A You could hear me talking to him walking
24 back, but unfortunately it's not on the video.

1 Q So the only thing that captured that
2 demonstration is the audio?

3 A Yes, sir.

4 Q Is there any particular reason you didn't
5 have him draw or write down or sketch out where he was on
6 the roadway?

7 A Didn't think about it.

8 Q Okay. The other two troopers that were
9 present, did they have any discussions or interactions
10 with Mr. Martinez that you are aware of?

11 A I believe Trooper Flowers had a brief
12 discussion with him.

13 Q Do you know -- do you know any details
14 about that?

15 A I just -- from what Trooper Flowers told
16 me, Martinez went to tell him what happened, and he
17 stopped him and said, "I don't want to be involved. Tell
18 Trooper Atkins."

19 Q So is it your understanding Mr. Martinez
20 actually sought out Trooper -- which trooper was it?

21 A Flowers.

22 Q -- Trooper Flowers to say something to
23 him?

24 A I'm not sure. I can't say for sure.

1 Q Okay. But it's your understanding
2 Trooper Flowers does not have any discussions with
3 Mr. Martinez of any substance?

4 A Yes, sir.

5 Q So the only trooper that did have any
6 substantive discussions with Mr. Martinez was you?

7 A Yes, sir.

8 Q Do the photos that are here as Exhibit 3,
9 to the best of your knowledge, do they show all of the
10 physical damage to the vehicles that were involved?

11 A To the best of my knowledge, yes.

12 Q I think you might have been asked this
13 but I want to --

14 A That's fine.

15 Q -- ask you a different way.

16 Were you able to determine whether or not
17 the SMC truck was in motion or moving when the first
18 collision with Lester's vehicle occurred?

19 A No.

20 Q Were you able to determine how much time
21 passed between the first collision and the second
22 collision?

23 A No, sir.

24 Q Were you able to determine whether

1 Mr. Lester was inside of his vehicle or outside of his
2 vehicle when the second collision occurred?

3 A No, sir.

4 Q In your report, which I think is marked
5 as Exhibit 1 --

6 A Yes, sir.

7 Q -- on Page 3 --

8 A Yes, sir.

9 Q -- there's a section at the top right
10 that says "vehicle maneuver." Do you see that?

11 A Vehicle maneuver, yes, sir.

12 Q And you see Vehicle 1 is there. That's
13 the SMC vehicle operated by Mr. Martinez?

14 A Yes, sir.

15 Q For the vehicle maneuver, you did not
16 indicate making a U turn, correct?

17 A Yes, sir.

18 Q You did not indicate making a right turn,
19 correct?

20 A Yes, sir.

21 Q You indicate "other"?

22 A Yes, sir.

23 Q Why did you do that?

24 A I did it because, based on the maneuver

1 he was trying to do is go backwards, I believe "other"
2 probably best dictated his actions.

3 Q And that's based on what he was trying to
4 describe to you at the scene?

5 A Yes, sir.

6 Q And he was upset?

7 A Yes, sir.

8 Q You were -- because you were the lead
9 investigator, you were responsible for gathering all the
10 witness statements, correct?

11 A Yes, sir.

12 Q And so after the witnesses wrote out
13 their statements, they either brought them to you directly
14 or another trooper brought them to you, correct?

15 A Yes, sir.

16 Q Did you ask any witness to add
17 information to any of their written statements?

18 A I do not recall.

19 Q Is that something you would normally do?

20 A If there is something missing, I will ask
21 them to put that in there.

22 Q Who would determine whether it's missing?
23 Who would determine whether a witness has left out
24 information on the witness statement that they write?

1 A It would be me when I read it.

2 Q Do you agree that no witness that
3 provided a written statement in this case to you wrote
4 down that the SMC truck was blocking both lanes of
5 Interstate Southbound 81?

6 A I don't believe so.

7 Q And when you drew the diagram of the
8 accident sequence on your report and you drew in Vehicle
9 1, which is the SMC vehicle, you do not have it depicted
10 as blocking both lanes of the highway, correct?

11 A Yes, sir.

12 Q Correct; that you did not draw it
13 blocking both lanes of the highway, correct?

14 A I did not, yes, sir.

15 Q And in fact in your diagram, it shows
16 Vehicle 1 only partially into the right southbound lane of
17 Interstate 81, correct?

18 A Yes, sir.

19 Q Not fully across the lane?

20 A Yes, sir.

21 Q Okay. And, again, that's based on all of
22 the information that you developed at the scene of the
23 accident?

24 A That, and the fact that his pickup truck

1 didn't hit the guardrail. I believe that it was all the
2 way across the interstate looking at it. And if he made
3 contact, he would have more than likely pushed off that
4 tractor-trailer and hit the guardrail.

5 Q Okay. You have been asked a lot of
6 questions about his logbook.

7 A Yes, sir.

8 Q So let me ask you just a couple more.

9 A That's fine.

10 Q All right. So Mr. Martinez goes and
11 brings you a binder, correct?

12 A Yes, sir.

13 Q And it had a bunch of stuff in it?

14 A Yes, sir.

15 Q All right. Did it have something in it
16 that appeared to you to look like a logbook?

17 A I believe so. I'm not for certain.

18 MR. DUNN: I'm going to object to the
19 form of the question.

20 BY MR. HEARN:

21 Q On the audio, do you recall referring to
22 a document and saying, "That's your logbook. I don't need
23 that"?

24 A I don't recall. I mean, I -- I did

1 clearly probably in the video. I just don't recall it.

2 Q Okay. All I'm getting at, do you have a
3 general idea of what a logbook looks like?

4 A Yes, sir.

5 Q I know you are not a logbook expert and
6 you're not a DOT qualified inspector. I get all that.
7 But you know what a logbook looks like?

8 A Yes, sir.

9 Q And on the audio you agree that you say,
10 "That's your logbook. I don't need that"?

11 A Okay, yes, sir.

12 MR. DUNN: I'm going to object to the
13 form of the question.

14 BY MR. HEARN:

15 Q When you first made contact with
16 Mr. Martinez, where was he? Did you walk up to him
17 because the trooper pointed him out to you or did he come
18 up to you?

19 A We both like walked to each other.

20 Q And approximately where were you two in
21 relationship to the accident scene?

22 A Can I just show you?

23 Q Sure.

24 A Somewhere right in here.

1 Q Okay. And for the record, you are
2 indicating on Exhibit 2 -- this is Exhibit 2 that you are
3 pointing on, right?

4 A Yes, sir, on Exhibit 2, yes, sir.

5 Q All right. And you are indicating
6 somewhere near the portion of the diagramming that's
7 attributable to B?

8 A Yes, sir.

9 Q Okay.

10 A In-between B and C --

11 Q Okay.

12 A -- in the diagram.

13 Q Now, before you first made contact with
14 Mr. Martinez had you already seen or spoken to the other
15 Hispanic male that you talked about?

16 A I don't believe so.

17 Q Okay. So when you saw the other Hispanic
18 male, that was after you had already talked to
19 Mr. Martinez?

20 A Yes, sir, when I asked for -- I believe
21 when I asked for his information, I believe he came up and
22 asked who he was. I believe so.

23 Q Just so I'm clear, so after you asked
24 Mr. Martinez for his information and he went back to the

1 truck to get the notebook, then this other Hispanic
2 gentleman came up to you and said something?

3 A I believe so, yes, sir.

4 Q Okay.

5 A I believe I was at SMC's truck whenever
6 this encounter took place.

7 Q Okay. Can you describe this other
8 Hispanic gentleman, not Mr. Martinez but the other one?

9 A No, sir.

10 Q Age?

11 A No, sir.

12 Q Did he have tattoos?

13 A I do not know.

14 Q Short hair, long hair?

15 A I do not know.

16 Q Okay. So you were standing near the SMC
17 vehicle for some period of time while you were talking
18 with Mr. Martinez and this other gentleman?

19 A Yes, sir.

20 Q Okay. Could you tell whether there were
21 any other occupants or whether there were any occupants in
22 the SMC vehicle while you were out there talking to
23 Mr. Martinez?

24 A I could not tell.

1 Q Did you ever look inside the SMC vehicle?

2 A I did not.

3 Q What about the other vehicle that it was
4 towing the Salinas vehicle, did you ever look inside that
5 vehicle?

6 A No, sir.

7 Q Did any trooper look inside?

8 A Not that I recall.

9 Q Do you know whether there were any
10 occupants in that vehicle?

11 A No, sir.

12 Q And just so I'm clear, no one else came
13 up to you at the scene and identified themselves as
14 someone associated with these vehicles?

15 A No, sir.

16 Q Or that had witnessed any of the events?

17 A Not that I recall.

18 Q Did you document this discussion you had
19 with somebody that you understood to be a representative
20 of SMC Transport that occurred three to four days later?

21 A No, sir.

22 Q You didn't take notes or anything?

23 A No, sir.

24 Q Did you ever do an investigation or check

1 anywhere to see if SMC Transport reported that SMC vehicle
2 as stolen?

3 A After that day, no. After the crash, no,
4 did not.

5 Q Did you check on the day of the crash?

6 A Yes, sir.

7 Q At that time was there any indication
8 that anyone had reported that vehicle as stolen?

9 A No, sir.

10 Q And you didn't look into that after you
11 talked to someone that you understood worked for SMC and
12 they said that Martinez didn't have authority to use the
13 vehicle?

14 A I gave her the information that she
15 needed to -- I told her she needed to contact people in
16 Texas and file a report stating that someone unauthorized
17 used her vehicle.

18 Q Okay.

19 A And if she had any more information to
20 call me back. She did not.

21 Q You never did an independent check on
22 your own to see what, if anything, happened with that?

23 A No, sir.

24 MR. HEARN: Thank you, Trooper. That's

1 all my questions.

2 THE WITNESS: Yes, sir. Your turn.

3 EXAMINATION

4 BY MR. DUNN:

5 Q Trooper Atkins, in investigating the
6 accident, you determined that a tractor was towing another
7 tractor, correct?

8 A Yes, sir.

9 Q And one of the tractors was owned by SMC
10 Transport LLC, correct?

11 A Yes, sir.

12 Q And the other tractor, the one that was
13 being towed, was owned by Salinas Express, correct?

14 A Yes, sir.

15 Q And you said that you got a personal note
16 or a personal message to give somebody a call about three
17 or four days later?

18 A Approximately three or four days later,
19 yes, sir.

20 Q What do you mean by a personal message?

21 A Whenever someone wants to speak with me,
22 they call our dispatch and say, "I need to speak with
23 Trooper Atkins." They give me or dispatch their number.
24 And I -- when I mark on duty the next day or whatever day

1 it was, I get a direct message to my terminal saying, "You
2 need to call this person" with the name and phone number.

3 Q Is that direct message something you see
4 electronically on a screen?

5 A Yes, sir.

6 Q Is that direct message kept anywhere,
7 stored anywhere?

8 A I believe so.

9 Q As far as you know, it's still somewhere
10 that can be accessed?

11 A Should be, yes, sir.

12 Q Have you accessed or retrieved that
13 direct message you just talked about, a copy of it?

14 A That day of? I had it and I have not
15 looked at it since I called her.

16 Q Do you still have it?

17 A No, I don't. I can look it up probably.
18 I don't know. I can call dispatch and see if they can
19 look it up.

20 Q But as far as what you have right now in
21 your possession, you don't have that direct message either
22 electronically or in paper form?

23 A No, sir, I do not.

24 Q So the direct message you are talking

1 about right now is from your memory?

2 A And me making a phone call, yes.

3 Q And making a phone call?

4 A Which, I guess, is memory.

5 Q The direct message, did it have a phone
6 number to call?

7 A Yes, sir.

8 Q Do you recall that phone number?

9 A No, sir.

10 Q How about the area code, do you recall
11 the area code?

12 A No, sir.

13 Q And did that direct message have a name
14 on it for you to call?

15 A I believe so. I do not recall that.

16 Q All right. When you dialed that number,
17 did you ever get a name of a person that you were talking
18 to?

19 A I believe so. I just don't recall it.

20 Q And I understand somebody asked you. You
21 didn't take down any notes of your conversation, did you?

22 A No, sir.

23 Q You mentioned something about somebody
24 being a regular driver. Is it possible that it could have

1 been a Salinas -- reference to a Salinas Express Company
2 as opposed to SMC Transport?

3 A I believe she said Martinez.

4 Q Said Martinez?

5 A Yes. Yes, sir.

6 Q Right. But is it possible that she was
7 referring to Salinas Express rather than SMC Transport?

8 A It's possible.

9 Q So as you sit here today, you're not sure
10 whether it was SMC Transport she was referring to or
11 Salinas Express?

12 A All right. Actually, go back.

13 Q Okay.

14 A She said that she is the owner of SMC and
15 Mr. Martinez is a daily driver for SMC.

16 Q For SMC?

17 A SMC.

18 Q My question was --

19 A Yes, so it's SMC. I guess no possibility
20 that it was for Salinas.

21 Q Okay. And when you talked to this lady,
22 she said that Mr. Martinez, Jr., had no permission to
23 drive this particular tractor, correct?

24 A On that day.

1 Q On that day?

2 A Yeah.

3 Q Did she qualify and say "that day" or
4 she -- did she say --

5 A She said at the time of the crash that he
6 wasn't supposed to be driving the vehicle.

7 Q Okay.

8 A And then -- sorry.

9 Q Now, as far as whether he had permission
10 to drive or not, that's all you recall her telling you; is
11 that right?

12 A And the fact that they didn't have
13 insurance on the truck.

14 Q Do you know if there is an audio
15 recording of that conversation?

16 A There is not.

17 Q And you said that lady said she was the
18 owner of SMC Transport?

19 A I believe so. Owner/representative with
20 SMC.

21 Q Well, as you sit here today, you are not
22 sure the lady that answered the phone call that you made,
23 the lady that answered, you are not sure whether she said
24 she was owner or some type of representative?

1 A She was a representative.

2 Q Okay.

3 A I'm not for certain if she was an owner
4 or what.

5 Q Okay. So you can't go beyond that she
6 was a representative. You can't get any more detail than
7 that, correct?

8 A No, sir.

9 Q You agree with me?

10 A Yes, sir.

11 Q You said you made the call from your area
12 headquarters?

13 A Area 39 office, yes, sir.

14 Q So it was on a phone that is in the name
15 of the area headquarters there?

16 A Yes, sir.

17 Q When you made that call, is there a
18 caller ID screen that you can see?

19 A I don't believe so. I have only been
20 called my cell phone from that number before, and it just
21 has the number. It doesn't have -- so I don't know how it
22 is on a house number.

23 Q Do you know if those particular phone
24 calls are kept -- recorded somewhere, like the phone --

1 the actual number that's been called or dialed?

2 A I'm not sure.

3 Q Do you know how long that conversation
4 lasted that you had with that lady?

5 A No, sir. Approximately -- if I had to
6 guess, it would be five minutes, four minutes.

7 Q Did you have any conversation with
8 anybody else who said they were associated in any way with
9 SMC Transport?

10 A No, sir.

11 Q Do you know whether Israel Martinez ever
12 said he was driving for anybody, any particular company or
13 not, in your investigation?

14 A No, sir.

15 Q Do you know whether, in your
16 investigation, whether it was Israel Martinez, Jr., said
17 whether or not he had permission or not to drive that
18 tractor?

19 A No, sir.

20 MR. DUNN: All right. Thanks for your
21 time.

22 THE WITNESS: Yes, sir.

23 MR. FRANKL: I just have a couple of
24 follow-ups.

1 THE WITNESS: Yes, sir.

2 EXAMINATION

3 BY MR. FRANKL:

4 Q If your disk is full in your car, does it
5 automatically shut off?

6 A It ends on that disk.

7 Q Okay. But -- you have to then physically
8 put in another disk?

9 A The way it works is if the -- say that
10 the -- my disk only allows like three hours, I think.
11 With it being two hours, it gets to the end of that disk,
12 it keeps recording. But when I eject it, it stops right
13 there on that disk of where it got full at. And then on
14 the other disk, it will have the little ending of it. So
15 there's a possibility of the remaining part that I spoke
16 to Mr. Martinez.

17 Q May be on another disk?

18 A Yes.

19 Q Will you agree to check to see if the
20 remaining --

21 A If I -- if it's still available -- if
22 that disk is still available from six months ago.

23 Q But if you can find it, you will take a
24 look for it?

1 A Yes.

2 Q And will you also try to take a look for
3 whatever --

4 A Phone number?

5 Q -- dispatch message they gave you?

6 A I'm going to go out to my car and do it.

7 Q Will you agree to call me --

8 A Of course.

9 Q -- call me and let me know?

10 A Yes.

11 Q You have got my phone number?

12 A I believe so. I put it in my phone last
13 time.

14 Q And I will let everybody know as soon as
15 he calls.

16 You indicated in answer to one of
17 Johneal's questions, she asked was the SMC tractor
18 blocking at least the whole right-hand lane. And you said
19 "yes." Do you have any knowledge of how far the SMC
20 tractor was into the travel portions of the right-hand
21 lane of Interstate 81?

22 A I do not know for certain.

23 Q Okay. And there's a conversation on your
24 audio with Flowers where you say, "Should I write this up

1 as one accident or two accidents?" And he said, "You
2 could make the decision to write it up as one or two based
3 on the timing of the accidents." And you basically chose
4 to write it up as one?

5 A Yes, sir.

6 Q And, in fact, none of the four witness
7 statements say anything about the SMC tractor blocking or
8 being out onto Interstate 81 travel lanes, do they?

9 A Witnesses, no. From the three women --
10 the four women, no.

11 Q Right, from the four women.

12 And then were you -- when you said this
13 is at least on the video, "This is your logbook; I don't
14 need to see that," is that when you were having that
15 discussion next to the SMC truck?

16 MR. DUNN: I will object to the form of
17 the question.

18 Go ahead and answer.

19 THE WITNESS: No, that was in my car.

20 BY MR. FRANKL:

21 Q Okay. That was in your car?

22 A I believe so.

23 Q Okay. Was this conversation you had
24 outside the SMC tractor that you made reference to

1 earlier, to your knowledge, is that recorded on the disc?

2 A Yes, that was, I believe, when I was
3 looking at his truck to see the damage.

4 Q You think that's on there?

5 A I believe so.

6 Q And who were you talking to when that
7 took place?

8 A Martinez.

9 Q Was there anyone else around?

10 A I believe Trooper Flowers.

11 MR. FRANKL: That's all I have.

12 Trooper, you have the right to read and
13 sign this deposition to make sure that the court
14 reporter took down everything you said, or you
15 can waive that right and allow the court
16 reporter to sign for you.

17 THE WITNESS: Do you think you got
18 everything? Yeah, that's fine.

19 (The deposition concluded at 3:13 p.m.)

20

21

22 * * * * *

23

24

C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF ROANOKE

I, MARY J. BUTENSCHOEN, RPR, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the deposition of MICHAEL T. ATKINS was by me reduced to machine shorthand in the presence of the witness, afterwards transcribed by me by means of computer, and that to the best of my ability the foregoing is a true and correct transcript of the deposition so given as aforesaid.

I further certify that this deposition was taken at the time and place specified in the foregoing caption.

I further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia, on the 29th day of April 2016.

MARY J. BUTENSCHOEN, RPR
NOTARY PUBLIC

My Commission expires May 31, 2016
Notary Registration Number 228402

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